



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[HI 126-NBK; FRL-9712-2]

**Approval and Promulgation of Implementation Plans; State of
Hawaii; Update to Materials Incorporated by Reference**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change.

SUMMARY: EPA is updating the materials submitted by the State of Hawaii that are incorporated by reference (IBR) into the Hawaii State Implementation Plan (SIP). The regulations affected by this update have been previously submitted by the State of Hawaii and approved by EPA. This update affects the SIP materials that are available for public inspection at the National Archives and Records Administration (NARA), the Air and Radiation Docket and Information Center located at EPA Headquarters in Washington, D.C., and the EPA Regional Office.

DATES: *Effective Date:* This rule is effective on [Insert date of publication in the Federal Register].

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations:

Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA, 94105-3901;

Air and Radiation Docket and Information Center, EPA Headquarters Library, Infoterra Room (Room Number 3334), EPA West Building, 1301 Constitution Ave., NW., Washington, DC 20460; and

National Archives and Records Administration (NARA).

If you wish to obtain materials from a docket in the EPA Headquarters Library, please call the Office of Air and Radiation (OAR) Docket/Telephone number: 202-566-1742. For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, EPA Region IX, (415) 947-4120, allen.cynthia@epa.gov.

SUPPLEMENTARY INFORMATION

I. Background

The SIP is a living document which the State revises as necessary to address its unique air pollution problems. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations to make them part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference federally-approved SIPs, as a result of consultations between EPA and the Office of the Federal Register (OFR). The description of the revised SIP document, IBR procedures and "Identification of plan" format are discussed in further detail in the May 22, 1997 Federal Register

document. On August 4, 2005 (70 FR 44852), as corrected on August 23, 2005 (70 FR 49377), EPA published a document in the Federal Register beginning the new IBR procedures for the State of Hawaii. On April 23, 2012 (77 FR 24148) and April 27, 2012 (77 FR 25084) EPA published updates to the IBR material for the State of Hawaii.

II. EPA Action

In this action, EPA is doing the following:

A. Announcing an update to the IBR material as of December 20, 2012; and

B. Revising the entries in paragraphs 52.620(b) and (c) to reflect this update.

EPA has determined that today's rule falls under the "good cause" exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs. Under section 553 of the APA, an agency may find good cause where procedures are "impractical, unnecessary, or contrary to the public interest." Public comment is "unnecessary" and "contrary

to the public interest" since the codification only reflects existing law. Immediate notice in the CFR benefits the public by removing outdated citations and incorrect table entries.

III. Statutory and Executive Order Reviews

A. General Requirements

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);

- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not

impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

EPA has also determined that the provisions of section 307(b)(1) of the CAA pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the Hawaii SIP compilations had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial

review for this "Identification of plan" reorganization update action for the State of Hawaii.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Dated: July 19, 2012

Jared Blumenfeld,
Regional Administrator,
Region IX.

Editorial Note: This document was received at the Office of the Federal Register on February 14, 2013.

Part 52, chapter I, title 40 of the Code of Federal Regulations are amended as follows:

PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart M -Hawaii

2. Section 52.620 is amended revising paragraphs (b) and (c) to read as follows:

§52.620 Identification of plan.

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(b) Incorporation by reference. (1) Material listed in paragraph (c) and (d) of this section with an EPA approval date prior to May 1, 2012, was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the Federal Register. Entries in paragraphs (c) and (d) of this section with EPA approval dates after May 1, 2012, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region IX certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph

(b) (3) of this section are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State implementation plan as of May 1, 2012.

(3) Copies of the materials incorporated by reference may be inspected at the Region IX EPA Office at 75 Hawthorne Street, San Francisco, CA 94105; Air and Radiation Docket and Information Center, EPA Headquarters Library, Infoterra Room (Room Number 3334), EPA West Building, 1301 Constitution Ave., NW., Washington, DC; or the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

(c) EPA approved regulations.

EPA-APPROVED STATE OF HAWAII REGULATIONS

| State citation | Title/subject | Effective date | EPA approval date | Explanation |
|---|--------------------------------------|-----------------------|--------------------------|--|
| Department of Health, Public Health Regulations, Chapter 43, Air Pollution Control Regulations: | | | | |
| Section 22 | Hearings and Appeals | 12/26/1972 | 05/14/1973, 38 FR 12711 | See also 74 FR 11037 (March 16, 2009). |
| Section 23 | Application | 03/28/1972 | 05/31/1972, 37 FR 10842 | See also 74 FR 11037 (March 16, 2009). |
| Department of Health, Title 11, Chapter 60, Air Pollution Control Regulations: | | | | |
| 11-60-18 | Control of open burning | 11/29/1982 | 08/18/1983, 48 FR 37403 | |
| 11-60-21 | Agricultural burning, "no burn" days | 11/29/1982 | 08/18/1983, 48 FR 37403 | |
| 11-60-23 | Agricultural burning, | 11/29/1982 | 08/18/1983, 48 FR 37403 | |

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|---|---|------------|----------------------------|---|
| | action on applications | | | |
| 11-60-26 | Fugitive dust | 11/29/1982 | 08/18/1983, 48 FR 37403 | |
| 11-60-27 | Incineration | 11/29/1982 | 08/18/1983, 48 FR 37403 | |
| 11-60-28 | Bagasse-burning boilers | 11/29/1982 | 08/18/1983, 48 FR 37403 | |
| 11-60-29 | Process industries | 11/29/1982 | 08/18/1983, 48 FR 37403 | |
| Department of Health, Title 11, Chapter 60.1, Air Pollution Control. Hawaii Administrative Rules | | | | |
| 11-60.1-1 | Definitions | 11/14/2003 | 4/27/2012, 77 FR 25084 | Supersedes 11-60-1. |
| 11-60.1-2 | Prohibition of air pollution | 11/14/2003 | 4/27/2012, 77 FR 25084 | Supersedes 11-60-17. |
| 11-60.1-3 | General conditions for considering applications | | 04/23/2012, 77 FR 24148 | Supersedes 11-60-04, 11-60-11, 11-60-13, 11-60-14. |
| 11-60.1-4 | Certification | 11/14/2003 | 4/27/2012, 77 FR 25084 | New regulation. |
| 11-60.1-5 | Permit conditions | | 04/23/2012, 77 FR 24148 | New regulation. |
| 11-60.1-7 | Transfer of permit | | 04/23/2012, 77 FR 24148 | Supersedes 11-60-09. |
| 11-60.1-8 | Reporting discontinuance | 11/14/2003 | 4/27/2012, 77 FR 25084 | Supersedes 11-60-10. |
| 11-60.1-11 | Sampling, testing, and reporting methods | 11/14/2003 | 4/27/2012, 77 FR 25084 | Supersedes 11-60-15 and 11-60-6. |
| 11-60.1-12 | Air quality models | | 04/23/2012, 77 FR 24148 | New regulation. |
| 11-60.1-14 | Public access to information | 11/14/2003 | 4/27/2012, 77 FR 25084 | New regulation. |
| 11-60.1-15 | Reporting of equipment shutdown | 11/14/2003 | 4/27/2012, 77 FR 25084 | Supersedes 11-60-16. |
| 11-60.1-16 | Prompt reporting of deviations | 11/14/2003 | 4/27/2012, 77 FR 25084 | Supersedes 11-60-16. |
| 11-60.1-17 | Prevention of air pollution emergency episodes | 11/14/2003 | 4/27/2012, 77 FR 25084 | Supersedes 11-60-35. |
| 11-60.1-19 | Penalties and remedies | | 04/23/2012, 77 FR 24148 | Supersedes 11-60-37. |
| 11-60.1-20 | Severability | 11/14/2003 | 4/27/2012, | Supersedes |

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|------------|--|------------|----------------------------|--|
| | | | 77 FR 25084 | 11-60-38. |
| 11-60.1-32 | Visible emissions | 11/14/2003 | 4/27/2012, 77 FR 25084 | Supersedes 11-60-24. |
| 11-60.1-34 | Motor vehicles | 11/14/2003 | 4/27/2012, 77 FR 25084 | Supersedes 11-60-25. |
| 11-60.1-40 | Volatile organic compound water separation | 11/14/2003 | 4/27/2012, 77 FR 25084 | New regulation. |
| 11-60.1-41 | Pump and compressor requirements | 11/14/2003 | 4/27/2012, 77 FR 25084 | New regulation. |
| 11-60.1-42 | Waste gas disposal | 11/14/2003 | 4/27/2012, 77 FR 25084 | New regulation. |
| 11-60.1-51 | Definitions | 11/14/2003 | 4/27/2012, 77 FR 25084 | Supersedes 11-60-1. |
| 11-60.1-53 | Agricultural burning: permit requirement | 11/14/2003 | 4/27/2012, 77 FR 25084 | Supersedes 11-60-19. |
| 11-60.1-54 | Agricultural burning: applications | 11/14/2003 | 4/27/2012, 77 FR 25084 | Supersedes 11-60-20. |
| 11-60.1-56 | Agricultural burning: recordkeeping and monitoring | 11/14/2003 | 4/27/2012, 77 FR 25084 | Supersedes 11-60-22. |
| 11-60.1-81 | Definitions | | 04/23/2012, 77 FR 24148 | New regulation. |
| 11-60.1-82 | Applicability | | 04/23/2012, 77 FR 24148 | Supersedes 11-60-02. |
| 11-60.1-83 | Initial covered source permit application | | 04/23/2012, 77 FR 24148 | Supersedes 11-60-03, 11-60-05, 11-60-07, 11-60-08, 11-60-12. |
| 11-60.1-84 | Duty to supplement or correct permit applications | | 04/23/2012, 77 FR 24148 | New regulation. |
| 11-60.1-91 | Temporary covered source permits | | 04/23/2012, 77 FR 24148 | New regulation. |
| 11-60.1-92 | Covered source general permits | | 04/23/2012, 77 FR 24148 | New regulation. |
| 11-60.1-93 | Federally-enforceable permit terms and conditions | | 04/23/2012, 77 FR 24148 | New regulation. |

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|-------------|--|--|----------------------------|-----------------|
| 11-60.1-99 | Public participation | | 04/23/2012, 77 FR 24148 | New regulation. |
| 11-60.1-103 | Applications for minor modifications | | 04/23/2012, 77 FR 24148 | New regulation. |
| 11-60.1-104 | Applications for significant modifications | | 04/23/2012, 77 FR 24148 | New regulation. |

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